

to-serve product when prepared according to the serving directions on the consumer package.

(b) Any human food product (in an institutional pack), not provided for in paragraph (c) of this section, if:

(1) It is prepared for sale only to institutional users, such as hotels, restaurants, and boardinghouses, for use as a soup base or flavoring;

(2) It contains less than 15 percent cooked poultry meat (deboned white or dark poultry meat or both) and/or "Mechanically Separated (Kind of Poultry)" as defined in §381.173, computed on the basis of the moist deboned, cooked poultry meat and/or "Mechanically Separated (Kind of Poultry)" in such product; and

(3) It complies with the provisions of paragraphs (a)(3), (4), and (5) of this section in all respects.

(c) Bouillon cubes, poultry broths, gravies, sauces, seasonings, and flavorings if:

(1) They contain poultry meat and/or "Mechanically Separated (Kind of Poultry)" as defined in §381.173 or poultry fat only in condimental quantities;

(2) They comply with the provisions of paragraphs (a)(3), (4), and (5) of this section in all respects; and

(3) In the case of poultry broth, it will not be used in the processing of any poultry product in any official establishment.

(d) Fat capsules and sandwiches containing poultry products if they comply with the provisions of paragraphs (a)(3), (4), and (5) of this section in all respects.

(e) Products of the types specified in this section except those specified in paragraphs (c) and (d) of this section will be deemed to be represented as poultry products if the kind name of the poultry (chicken, turkey, etc.) is used in the product name of the product without appropriate qualification. For example, a consumer-packaged noodle soup product containing less than 2 percent chicken meat on a ready-to-serve basis may not be labeled "Chicken Noodle Soup" but, when appropriate, could be labeled as "Chicken Flavored Noodle Soup." Products exempted under this section are subject

to the requirements of the Federal Food, Drug, and Cosmetic Act.

[37 FR 9706, May 16, 1972, as amended at 60 FR 55982, Nov. 3, 1995]

#### **Subpart D—Application for Inspection; Grant or Refusal of Inspection**

##### **§381.16 How application shall be made.**

The operator of each establishment of the kind required by §381.6 to have inspection shall make application to the Administrator for inspection service. In cases of change of name, ownership, or location, a new application shall be made.

##### **§381.17 Filing of application.**

Every application for inspection at any establishment shall be made by the operator on a form furnished by the Meat and Poultry Inspection Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, and shall include all information called for by that form, including the name of any subsidiary corporation that will prepare any poultry product or conduct any other operation at the establishment for which inspection is requested. The applicant for inspection will be held responsible for compliance by all its subsidiaries with the requirements of the regulations at such establishments if inspection is granted. Processing of poultry products and other operations at the establishment for which inspection is granted may be conducted only by the applicant, except that such a subsidiary of the grantee, may conduct such operations at such establishment.

##### **§381.18 Authority of applicant.**

Any person applying for inspection service may be required at the discretion of the Administrator to demonstrate that the operator of the establishment authorized him to do so.

##### **§381.19 Application for inspection; irradiation facilities.**

All applicants for inspection whose operations include irradiation and other processing shall submit, to the

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Administrator, a proposed quality control system as provided in §381.149 of this part.

[62 FR 45026, Aug. 25, 1997]

### **§381.20 Survey and grant of inspection.**

(a) Before inspection is granted, FSIS shall survey the establishment to determine if the construction and facilities of the establishment are in accordance with the regulations. FSIS will grant inspection, subject to §381.21, when these requirements are met.

(b) FSIS shall give notice in writing to each applicant granted inspection and shall specify in the notice the establishment, including the limits of the establishment's premises, to which the grant pertains.

[62 FR 45026, Aug. 25, 1997]

### **§381.21 Refusal of inspection.**

(a) The Administrator may refuse to grant inspection at any establishment if he determines that it does not meet any requirements as to premises, facilities, and equipment, and the operation thereof, prescribed in the regulations under section 7 of the Act to prevent the distribution under the Act of adulterated poultry products, or that the applicant has not received approval of labeling and containers to be used at the establishment as required by the regulations. When inspection is refused for any such reason, the applicant shall be informed of the action and the reasons therefor and afforded an opportunity to present his views informally.

(b) If the refusal is based on a failure to comply with any requirements prescribed under section 7 of the Act, the applicant shall, upon his request, be afforded opportunity for a hearing in accordance with applicable rules of practice, with respect to the merits or validity of the action taken, but such refusal shall continue in effect unless otherwise ordered by the Secretary.

(c) Inspection may also be refused in accordance with section 18(a) of the Act and the applicable rules of practice.

(d)(1) Any applicant for inspection at an establishment where the operations thereof may result in any discharge into the navigable waters of the United

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States is required by subsection 21(b) of the Federal Water Pollution Control Act, as amended, to provide the Administrator with a certification as prescribed in said subsection that there is reasonable assurance that such activity will be conducted in a manner which will not violate the applicable water quality standards. No grant of inspection can be issued after April 3, 1970 (the date of enactment of the Water Quality Improvement Act), unless such certification has been obtained, or is waived because of failure or refusal of the State, interstate agency, or the Administrator of the Environmental Protection Agency to act on a request for certification within 1 year after receipt of such request. Further, upon receipt of an application for inspection and a certification as required by subsection 21(b) of the Federal Water Pollution Control Act, the Administrator (as defined in §381.1) is required by paragraph (2) of said subsection to notify the Administrator of the Environmental Protection Agency for proceedings in accordance with that paragraph. No grant of inspection can be made until the requirements of said paragraph (2) have been met.

(2) However, certification under subsection 21(b) of the Federal Water Pollution Control Act is not initially required in connection with an application for inspection granted after April 3, 1970, for facilities existing or under construction on April 3, 1970, although certification for such facilities is required to be obtained within the 3-year period immediately following April 3, 1970. Failure to obtain such certification or to meet the other requirements of subsection 21(b) prior to April 3, 1973, will result in the termination of inspection at such facilities on that date.

(3) Further, any application for inspection pending on April 3, 1970, and granted within 1 year thereafter shall not require certification for 1 year following the grant of inspection but such grant of inspection shall terminate at the end of 1 year after its issuance unless prior thereto such certification has been obtained and the other requirements of subsection 21(b) are met.

(4) In the case of any activity which will affect water quality but for which